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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 Yung Lo,  
11 Plaintiff,  
12 v.  
13 Golden Gaming, Inc., et al.,  
14 Defendants.  
15  
16

Case No.: 2:12-cv-1885-JAD-CHW  
**Order Denying as Moot Defendant  
Golden Gaming, Inc.'s Motion to  
Quash Service of Process and  
Dismiss the Complaint [Docs. 20 &  
22] and Permitting Plaintiff Lo an  
Additional 30 Days to Effect Proper  
Service of Process Pursuant to the  
Court's Order [Doc. 17]**

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18 *Pro se* plaintiff Yung Lo seeks to sue her former employer, Golden Gaming, which she  
19 claims discriminated against her in violation of Title VII of the Civil Rights Act of 1964, 42  
20 U.S.C. § 2000e *et seq.* Unfortunately Lo has not properly served Golden Gaming with a copy  
21 of the Summons and Complaint in compliance with Rule 4 of the Federal Rules of Civil  
22 Procedure or otherwise demonstrated good cause for the failure, in contravention of a prior court  
23 order. For the foregoing reasons, the Court grants Lo a one-time, 30-day extension of this  
24 deadline, and consequently denies as moot Golden Gaming's subsequently filed motions to  
25 quash service and dismiss Lo's complaint for failure to serve process.

26 **Background**

27 Lo originally sued Golden Gaming on November 5, 2012, seeking *in forma pauperis*  
28 status at that time. Doc. 1. Lo's request for *in forma pauperis* status was ultimately denied,

1 Docs. 2, 4, and her complaint was filed on July 22, 2013. Doc. 7. On November 26, 2013, the  
 2 Clerk of Court issued a Rule 4(m) notice of intent to dismiss Lo's Complaint, noting that no  
 3 proof of service had been filed, and providing Lo until December 26, 2013, to either provide  
 4 notice of service or otherwise demonstrate good cause why service could not be made. Doc. 17.

5 Three days before Lo's response was due, on December 23, 2013, Golden Gaming moved  
 6 to quash service of process and to dismiss the Complaint under Rules 12(b)(2), 12(b)(4), and  
 7 12(b)(5). Docs. 20, 22. Lo responded to this motion on December 26, 2013, Doc. 24, claiming,  
 8 *inter alia*, that she sent Golden Gaming "dismiss case copy together to Court today." *Id.* at 1.<sup>1</sup>  
 9 To date, there is still no record evidence that Lo ever served Golden Gaming with a copy of the  
 10 summons and complaint.

## 11 Discussion

### 12 A. The Court's November 26, 2013, Show Cause Order [Doc. 17]

#### 13 1. Golden Gaming

14 Federal Rule of Civil Procedure 4(m) requires service of the summons and complaint to  
 15 be completed within 120 days.<sup>2</sup> Rule 4(m) states that "[i]f a defendant is not served within 120  
 16 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff -  
 17 must dismiss the action without prejudice against that defendant or order that service be made  
 18 within a specified time. But if the plaintiff shows good cause for the failure, the court must  
 19 extend the time for service for an appropriate period."<sup>3</sup> Rule 4(c) further provides that "[t]he  
 20 plaintiff is responsible for having the summons and complaint served within the time allowed  
 21 under Rule 4(m)."<sup>4</sup>

22 Additionally, Rule 4(c) governs service of the summons and complaint and specifies that

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24 <sup>1</sup> Golden Gaming filed a reply. *See* Doc. 31. However, the reply was filed on January 14, 2014—19 days  
 25 after Lo's response. Under Local Rule 7-2(d), "unless otherwise ordered by the Court, reply points and  
 authorities shall be filed and served by the moving party seven (7) days after service of the response." Nev. L.R.  
 7-2(d).

26 <sup>2</sup> Fed. R. Civ. Proc. 4(m).

27 <sup>3</sup> *Id.*

28 <sup>4</sup> *Id.*

1 “Any person who is at least 18 years old *and not a party* may serve a summons and complaint.”<sup>5</sup>  
 2 Rule 4(h) governs service upon corporations, and provides several alternatives for service of  
 3 process. A domestic corporation may be served:

4 [B]y delivering a copy of the summons and of the complaint to an officer, a  
 5 managing or general agent, or any other agent authorized by appointment or  
 6 by law to receive service of process and--if the agent is one authorized by  
 statute and the statute so requires--by also mailing a copy of each to the  
 defendant.<sup>6</sup>

7 Service on a domestic corporation may also be made “in the manner prescribed by Rule 4(e)(1)  
 8 for serving an individual.”<sup>7</sup> Rule 4(e)(1) permits Golden Gaming to be served by the methods  
 9 identified by the law of the state where the district court is located or the state where service is  
 10 made—in this case, Nevada.<sup>8</sup> In Nevada, service upon a Nevada corporation is proper only if  
 11 both the summons and complaint are delivered to the corporation’s registered agent or any  
 12 corporate officer.<sup>9</sup> These are not trivial requirements: “service of process is the means by which  
 13 a court asserts jurisdiction over the person,”<sup>10</sup> and when personal service is required, failure to  
 14 perfect it is fatal to a lawsuit.<sup>11</sup>

15 Lo’s explanation that he served Golden Gaming with a “dismiss case copy together to  
 16 Court today” is incomprehensible, and in the months since Lo made this statement, Plaintiff has  
 17 failed to provide the Court with any indication that service was made in compliance with Rule  
 18 4. Without this evidence, the Court concludes that Lo failed to properly serve Golden Gaming  
 19 with a copy of the summons and complaint as required by the Court’s November 26, 2013, order,

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21 <sup>5</sup> *Id.* (emphasis added).

22 <sup>6</sup> *Id.* at 4(h)(1)(B).

23 <sup>7</sup> *Id.*

24 <sup>8</sup> See Fed. R. Civ. Proc. 4(e)(1). Golden Gaming has not disputed that it would be subject to Nevada’s  
 25 rules for service on a domestic corporation, and the Court discerns no reason to conclude that Golden Gaming  
 is not a corporation organized under Nevada law.

26 <sup>9</sup> Nev. R. Civ. Proc. 4(d)(1); *Willis v. City of Las Vegas*, 2014 WL 1308816, at \*6 (D. Nev. Mar. 31,  
 27 2014).

28 <sup>10</sup> *Securities and Exchange Commission v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (citation omitted).

<sup>11</sup> *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987).

1 or demonstrated good cause for why proper service was not made.

2 The Ninth Circuit has interpreted Rule 4(m) as requiring a two-step process for granting  
3 extensions of the service period.<sup>12</sup> If the Court finds good cause for the service delay, it must  
4 extend the time period. A court ascertains “good cause” on a case-by-case basis, the threshold  
5 requirement being excusable neglect.<sup>13</sup> Lo fails to demonstrate good cause for extension of the  
6 120-day service period, and the Court now turns to the appropriate remedy.

7 Where no good cause is shown, the Court has discretion to extend the time period or  
8 dismiss the unserved defendant without prejudice from the case.<sup>14</sup> The Court may extend the  
9 service period upon finding excusable neglect and additionally may require the plaintiff to  
10 demonstrate that (1) the party to be served received actual notice; (2) the defendant would not  
11 be prejudiced by the extension; and (3) severe prejudice would result to the Plaintiff.<sup>15</sup> “Exercise  
12 of discretion to extend time to complete service is appropriate when, for example, a statute-of-  
13 limitations bar would operate to prevent re-filing of the action.”<sup>16</sup> Since the plain language of  
14 Rule 4 does not “tie the hands of the district court after the 120-day period has expired,” the  
15 court has discretion to extend the period retroactively.<sup>17</sup>

16 Although Lo independently demonstrates nothing, the Court notes that Golden Gaming  
17 itself acknowledged in its motion to quash that some form of service was at least attempted: Lo  
18 personally served it with a copy of the motion for screening, instead of arranging for third party  
19 service of the summons and complaint in compliance with Rule 4. Doc. 22 at 4. Further,  
20 Golden Gaming fails to indicate how any prejudice will occur as a result of the service delay,  
21 and the Court discerns none. Finally, Lo will be prejudiced by dismissal of the complaint, as Lo

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23 <sup>12</sup> See *In re Sheenan*, 253 F.3d 507, 512 (9th Cir. 2001).

24 <sup>13</sup> See *id.*; *Robinson v. Churchill Community Hospital*, 2007 WL 496819, at \*1 (D. Nev. Feb. 12, 2007).

25 <sup>14</sup> See *United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?, Inc.*,  
366 F.3d 767, 772 (9th Cir. 2004); *Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003).

26 <sup>15</sup> *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009).

27 <sup>16</sup> *Id.*; see *Carr v. International Game Technology*, 770 F. Supp. 1080, 1090 (D. Nev. 2011).

28 <sup>17</sup> See *Mann*, 324 F.3d at 1090 (9th Cir. 2003).

1 exhausted her administrative remedies with the EEOC on August 20, 2012, and was permitted  
 2 90 days to file her claims in federal court—a filing period which has now long elapsed. *See* Doc.  
 3 7 at 32.<sup>18</sup>

4 Thus, although the Court could dismiss Lo’s action under Rule 4(m), out of an abundance  
 5 of caution, it permits Lo no later than 30 days from the issuance of this order to file proof that  
 6 the summons and complaint were served as required by the rules. The Court emphasizes to Lo  
 7 that her *pro se* status does not excuse her from compliance with the Federal Rules of Civil  
 8 Procedure, including service of process specified in Rule 4,<sup>19</sup> and that any failure by Lo to serve  
 9 Golden Gaming as specified by Rule 4 may result in dismissal of her complaint with prejudice  
 10 and without further notice.

## 11 **2. Other Defendants**

12 Lo’s complaint lists other defendants to this action: Blake L. II Sartini, Bill Barker,  
 13 Shirley Folkerson, Chrstepher Trout, and Nancy Plaisted. *See* Doc. 7 at 2-3. There is no  
 14 indication that Lo ever attempted to serve any of these defendants, and her “response” fails to  
 15 even reference them. *See* Doc. 24. Again, the Court concludes that no good cause has been  
 16 shown for why any of these individual defendants were not served, but consistent with the ruling  
 17 above permits Lo no later than 30 days from the issuance of this order to file proof that a  
 18 summons and complaint have been properly served on each individual defendant. The Court  
 19 emphasizes that any failure by Lo to serve any of these defendants as specified by Rule 4 may  
 20 result in dismissal of her complaint with prejudice without further notice.

## 21 **B. Golden Gaming’s Motion to Quash Service and Dismiss the Complaint [Docs. 20 & 22]**

22 Shortly before Lo’s response deadline, Golden Gaming filed motions to quash service and  
 23 to dismiss for failure to serve process. Docs. 20, 22. Golden Gaming argues that Lo personally  
 24 served Golden Gaming with a copy of the motion for screening instead of arranging for third  
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26 <sup>18</sup> 42 U.S.C. § 2000e-5(e); *Sanchez v. Pacific Powder Co.*, 147 F.3d 1097, 1100 (9th Cir. 1998); *Karim-*  
 27 *Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988); *Martinez v. Victoria Partners*, 2014 WL  
 28 1268705, at \*3 (D. Nev. Mar. 27, 2014).

<sup>19</sup> *See Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

1 party service of the summons and complaint in compliance with Rule 4. *Id.* at 4. Golden  
 2 Gaming requests dismissal of Lo's Complaint under Rules 12(b)(5) for failure to properly serve  
 3 it, as well as Rule 12(b)(4) for insufficient process. Doc. 20. Based on Lo's failure to serve,  
 4 Golden Gaming also argues that the Court lacks personal jurisdiction over it, such that dismissal  
 5 is also appropriate under Rule 12(b)(2). *See id.*

6 All three of Golden Gaming's arguments hinge on proper service of the summons and  
 7 complaint. Because the Court has granted Lo a 30-day extension of time to properly complete  
 8 service and file evidence of the same, and reminded Lo that she must demonstrate strict  
 9 compliance with the Federal Rules of Civil Procedure or risk dismissal of her complaint, Golden  
 10 Gaming's motion is denied as moot.


### 11 Conclusion

12 Accordingly, based upon the foregoing reasons and with good cause appearing,

13 It is **HEREBY ORDERED** that Golden Gaming's Motion to Quash Service of Process  
 14 and Dismiss the Complaint [Docs. 20, 22] are **DENIED AS MOOT**.

15 It is **FURTHER ORDERED** that Lo is permitted no later than 30 days from the issuance  
 16 of this order to file proof that a summons and complaint have been properly served on each  
 17 defendant: Golden Gaming, Blake L. II Sartini, Bill Barker, Shirley Folkerson, Chrstepher Trout,  
 18 and Nancy Plaisted. The Court emphasizes that any failure by Lo to serve any of these  
 19 defendants in the manner required by Rule 4 may result in dismissal of her complaint with  
 20 prejudice without further notice.

21 DATED: June 4, 2014.

22   
 23 JENNIFER A. DORSEY  
 24 UNITED STATES DISTRICT JUDGE

25 The clerk is directed to mail a copy of this order to:  
 26 Yung Lo  
 7887 Palace Monaco Avenue  
 27 Las Vegas, NV 89117  
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